



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Jettison Contractors, Inc.

File: B-242792

Date: June 5, 1991

Joseph E. Rutigliano, Esq., Rutigliano & Associates Co., L.P.A., for the protester.
Jeffrey I. Kessler, Esq., and Capt. Michael Ira Stump, Esq., Department of the Army, for the agency.
Jeanne White Isrin, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Failure by bidder to submit with its bid completed standard representations and certifications under section "K" of the solicitation, Standard Form LLL "Disclosure of Lobbying Activities," and the corporate certificate does not render the bid nonresponsive; those omissions do not affect the material obligations of the bidder and therefore may be corrected as minor irregularities.

2. Agency properly allowed correction of four alleged mistakes in low bid where three were extension errors in calculating line item totals amounting to a downward correction of \$1,401, one involved a misplaced decimal point in a unit price where the original worksheets provided clear and convincing evidence of the intended unit price and showed that the extended total was correct as stated, and downward correction of low bid did not prejudice other bidders or compromise integrity of competitive bidding system.

DECISION

Jettison Contractors, Inc. protests the award of a contract to Lomasney Combustion, Inc. under invitation for bids (IFB) No. DAAG60-90-B-0077, issued by the U.S. Military Academy at West Point, for removal of asbestos and insulation at West Point and Stewart Army Subpost in New Windsor, New York.

We deny the protest.

The solicitation was issued on May 3, 1990, and 13 bids were received by the June 4 bid opening date. Lomasney was the

apparent low bidder and Jettison was second low. Lomasney's bid submission did not include a completed Section K, "Representations, Certifications and other Statements of Offerors," including the Certificate of Independent Price Determination, the corporate certificate, which attests to the authority of the person signing the contract to bind the corporation, and Standard Form (SF) LLL, "Disclosure of Lobbying Activities." The contracting officer advised Lomasney of the omissions, and by letter of June 18, Lomasney provided the omitted documentation. Because of the substantial difference between Lomasney's price (\$535,226) and the government estimate (\$896,762.85), a meeting was held on June 26, at which Lomasney confirmed its understanding of the requirement and also clarified apparent clerical and mathematical errors in its bid. The contracting officer determined that the errors could be corrected pursuant to Federal Acquisition Regulation (FAR) mistake in bid rules and allowed Lomasney to do so; the corrections lowered Lomasney's bid price by \$1,401. The agency made award to Lomasney on January 18, 1991. Jettison filed this protest on January 30.

CERTIFICATIONS

Jettison argues that Lomasney's bid should have been rejected as nonresponsive for failure to submit the omitted forms and certificates. This argument is without merit. To be responsive, a bid must be an unequivocal offer to perform, without exception, the exact thing called for in the solicitation so that upon acceptance the contractor will be bound to perform in accordance with all of the IFB's material terms and conditions; a bid that is not such an unequivocal offer at bid opening must be rejected. Tennier Indus., Inc., B-239025, July 11, 1990, 69 Comp. Gen. 588, 90-2 CPD ¶ 25. However, failure to include with a bid completed standard representations and certifications under section "K" does not render the bid nonresponsive because it does not affect the bidder's material obligations. Such a failure therefore may be waived as a minor bidding irregularity and the information may be furnished after bid opening. See MDT Corp., B-236903, Jan. 22, 1990, 90-1 CPD ¶ 81; Gracon Corp., B-224344, July 7, 1986, 86-2 CPD ¶ 41. Likewise, the Certificate of Independent Price Determination can be completed after bid opening, see R&K Roofing and Sheet Metal, Inc., B-220424, Nov. 21, 1985, 85-2 CPD ¶ 587, as can the corporate certificate. See Alpha Q, Inc., B-234403.2, Oct. 31, 1989, 89-2 CPD ¶ 401.

Omission of the SF LLL information also did not render the bid nonresponsive. This form imposes no obligations on the contractor but, rather, requests contractor information regarding lobbying activities, pursuant to 31 U.S.C. § 1352 (1988), which prohibits the use of appropriated funds for certain lobbying activities; a bidder's failure to provide

this information with its bid therefore has no effect on its obligation under the contract. See Tennier Indus., Inc., B-239025, supra.

We conclude that Lomasney's omission of these items did not render its bid nonresponsive, and that the agency therefore properly allowed Lomasney to supply the omitted information after bid opening.

MISTAKE IN BID

Jettison claims that the mathematical errors in Lomasney's bid rendered it nonresponsive, and that the corrections were improper. Lomasney's alleged mistakes concerned contract line item numbers (CLINs) 0001a, 0004g, 0004j, and 0030. The IFB had arranged the work required into numerous line items for the removal and disposal of asbestos insulation and the installation of new insulation for specific sections of piping, measured in linear feet, or areas, measured in square feet. For the work related to piping, each line item contained an estimated number of linear feet of piping and required the bidder to provide a unit price per linear foot and an extended total (multiplication of the unit price by the estimated number of linear feet). For CLINs 0001a, 0004g, and 0004j, the quantity multiplied by the unit price did not equal the extended totals given. The extended totals for CLINs 0004g and 0004j were each incorrect by \$0.50. The contracting officer determined that those discrepancies had resulted from rounding during the multiplication process, and were de minimis and therefore correctable.

In the case of CLIN 0001a, Lomasney confirmed its unit price of \$4.30, resulting in a corrected line item total of \$30,100, \$1,400 less than the extended price in its bid. As to CLIN 0030, for Transition Electron Microscopy Analysis (TEMA) testing for asbestos, Lomasney stated that its unit price of \$12 was the result of a misplaced decimal point, and should have read \$1,200; this explanation was consistent with its extended price of \$12,000. Lomasney subsequently provided its original worksheets, which gave the unit price as \$1,200, and the contracting officer allowed the correction. The extended line item total remained as submitted, \$12,000. The correction of the four CLINs reduced Lomasney's bid from \$535,226 to \$533,825, a downward correction of \$1,401.^{1/}

^{1/} Also at the June 26 meeting, Lomasney indicated that it had been unaware of the New York State filing fees for asbestos removal projects, and asked to amend its bid to add the fee. Subsequently, the New York State Department of Labor informed the contracting officer that it did not require fees
(continued...)

Mistakes in a bid generally do not render the bid unacceptable if the errors are correctable under FAR § 14.406 mistake in bid procedures, as the agency determined here. See Northwest Piping, Inc., B-233796, Mar. 30, 1989, 89-1 CPD ¶ 333. In the case of CLIN 0030, where Lomasney claimed that its unit price contained a misplaced decimal point, we think correction of the error was proper under FAR § 14.406-3(a), which allows a bidder to correct an alleged mistake where clear and convincing evidence establishes both the existence of the mistake and the bid actually intended, and downward correction does not displace other bidders. See GSX Gov't Servs., Inc.--Recon., B-233101.2, Mar. 27, 1989, 89-1 CPD ¶ 308. Original worksheets can be used as evidence to establish the existence of the mistake and the intended bid if they are in good order and there is no contravening evidence. Lash Corp., 68 Comp. Gen. 232 (1989), 89-1 CPD ¶ 120. Here, Lomasney's original worksheets state a unit price of \$1,200 and validate the extended total, \$12,000.

As for CLIN 0001a, Lomasney's worksheets do not indicate whether its unit price or extended price is correct. However, even in cases where the intended bid is unclear, so long as the bid remains low in either case (whether the unit or the extended price is the correct one), the mistake is properly waived as a minor informality under FAR § 14.405 since the waiver does not prejudice other bidders. See Porterhouse Cleanin and Maintenance Serv. Co., Inc., B-225725, May 18, 1987, 87-1 CPD ¶ 522. Since Lomasney confirmed its unit price, resulting in a downward correction of \$1,400 to its already low bid, we find the agency properly allowed the correction.


With respect to Lomasney's other errors, CLINs 0004g and 0004j, we concur with the agency that the extension errors of \$0.50 cents in each case are de minimis and may be corrected. See Northwest Piping, Inc., B-233796, supra. Under FAR § 14.405, immaterial defects, i.e., those with a negligible effect on price, quantity, quality or delivery when contrasted with the cost of the services being acquired, can be corrected as long as there is no prejudice to other bidders. Clearly, no prejudice results from a downward correction of the low bid.

An otherwise successful bid can always be modified after bid opening to make its terms more favorable to the government.

1/(...continued)
for asbestos projects performed entirely on Federal property,
rendering the request moot.

FAR § 14.304-1; Louisville Lumber & Millwork, Inc.,
B-232592.2, Nov. 15, 1988, 88-2 CPD ¶ 479. Given that
Lomasney's corrections further reduced its already low bid,
and all of the errors are correctable under existing
regulations, we see no reason to object to the Army's
decision to allow correction.

The protest is denied.


for James F. Hinchman
General Counsel